NATURALIZATION IN ENGLAND AND THE AMERICAN COLONIES

THE relations existing between England and America during colonial times are full of interest, and perhaps no question is more important than that of immigration and subsequent citizenship. During the hundred years that preceded the Revolution many foreigners came voluntarily to the English colonies in search of homes and by their industry aided materially in the upbuilding of America, while still others became British subjects as a result of British conquest. The political status assigned to them both by England and by the colonies has as yet received little attention, and one of the interesting and neglected questions connected with the newcomers was naturalization. Almost the only discussion of the subject is the brief monograph by Miss Cora Start, "Naturalization in the English Colonies,"[1] which outlines the question along political rather than legal lines. There is still room to investigate England's attitude on citizenship, and the effect of English law and opinion. With the purpose of supplementing Miss Start's work and of studying early English and colonial laws upon naturalization, this paper has been prepared.

Most nations have their era of provincialism, when their life and thought is self-centered; when they regard others as inferior and assert the superiority of their own strength. Coming in touch with outsiders, they call them barbarians, foreigners, or heathen Only by degrees are the barriers of race-suspicion and race-prejudice broken down, and many different factors have a share in the broadening process. Trade and commerce, war and strife, have forced peoples into close contact and compelled them to recognize the good in others. Slowly each has learned that no nation "liveth unto itself." Toleration has grown and developed as this fundamental proposition has been recognized, but real equality was not granted until a country was willing to admit into its family life those who had been born without its borders. Naturalization has been the initiatory rite by which outsiders have been admitted to the privileges of the national life, but a long struggle was necessary before such privileges were fully recognized and freely given.

[1] *Annual Report of the American Historical Association, 1893*, 317–328.

In bitter opposition to naturalization has stood the doctrine of indelible allegiance which forever binds a man to the flag under which he happens to be born. After nations have shown a willingness to admit foreigners to their fellowship, they have not recognized any right upon the part of their own subjects to become citizens of other countries. With curious reasoning they have welcomed strangers to their fold, while saying that their citizenship should hold against all. Even the United States, the foremost advocate of individual freedom, has suffered from this conflict of ideas. Executive officers have most consistently upheld the liberal view, while the judiciary has followed the narrower view of the common law as inherited from England.[1] Moreover, the doctrine of indelible allegiance is still strong, for original citizenship easily reverts even in the present day.[2] Great Britain held steadfastly to the above doctrine until 1870. "Once an Englishman, always an Englishman" was her watchword, and most faithfully did she uphold it. Thus, in 1703 Attorney-General Northey gave an opinion in which he held that if a person was naturalized without the license of Her Majesty, that fact would not discharge him from his natural allegiance,[3] and the same principle was again strongly asserted in the Æneas Macdonald case of 1745.[4] The mere fact of birth on English soil was all that was necessary, and no allowance was made for one who had lived and been educated abroad. In fact, personal considerations were never permitted to stand in the way, and England's power was used vigorously against those who in any way forgot their true allegiance. If English ships were in need of crews, and English subjects were found serving aboard foreign vessels, there was no hesitation about taking them — by force, if necessary. This annoying procedure was at its worst stage during the Napoleonic wars, when neutral rights were completely overridden. Then it was that the United States took a stand for the rights of neutrals and asserted the principle of expatriation and naturalization. Although brought up in the traditions of England and inheriting her legal ideas, the United States took an opposite view, which in time the mother-country adopted. The development of the American idea is well worth study, and can be understood only by investigation in that period of tutelage and semi-independence, the colonial era.

[1] This conflict of ideas is well shown in the *Opinions of the Attorneys General*, VIII. 139–169; 2 Cranch 82, note; Prentice Webster, *Law of Citizenship*, 74.

[2] The reversion to original citizenship is brought out in the naturalization treaties which the United States began in 1867. A comparatively short residence in the land of one's birth restores the former status.

[3] George Chalmers, *Colonial Opinions*, 645.

[4] Foster's *Crown Cases*, 59. Quoted by Sir Alexander Cockburn in *Nationality*, 64.

Before discussing colonial conditions, it will be necessary to learn what ideas regarding citizenship and allegiance the colonies inherited from England. All Englishmen coming to America brought with them the common law, which in this case rested upon the feudal law, whereby every man was attached to the soil and owed allegiance to the overlord upon whose land he was born. Thus allegiance and citizenship, like family and race, were determined for the individual by his birth. Personal choice was not recognized; political institutions rested on natural laws. England held to that principle without a break until 1350, when she permitted children that inherited and were born out of the English allegiance to have all the rights of natural-born subjects. It is worth noticing that in this respect the United States courts followed English principle and maintained the feudal law until 1855, when citizenship was extended to persons born of American parents outside of the United States.

England at first divided the people who dwelt within her borders into three classes — natural-born subjects, aliens, and denizens. The first two do not need definition; the last applies to a class of residents occupying a position between the other two. Denizenship was a status conferred upon an alien by letters patent issued by the monarch, whereby the foreigner was enabled to hold lands as well as inherit and transmit property to the children that were born after denization was granted.[1] These letters were considered matters of high prerogative and could be issued only by the king. The status thus given bestowed on the recipient a distinct advantage which the alien did not possess, inasmuch as the latter could not inherit or hold lands, although allowed to have personal property. The privileges of denization were very precarious, for they rested upon the monarch's will alone, and consequently were apt to be withdrawn. There was such a withdrawal of privileges in the time of Philip and Mary. One of the laws of the time provided that letters of denization that had been granted to Frenchmen since 32 Henry VIII. might be repealed by a proclamation made to that effect, and that while the lands of all such denizens might descend to their heirs, yet the profits of the lands during the life of the denizen should go to the Crown.[2] The same law provided that aliens who were licensed to stay in the realm had to give security that they would obey the laws. Even in the time of Henry VIII. we find laws commanding all foreigners having letters of denization[3] to obey

[1] *Ibid.*, 28.

[2] 3 and 4 Philip and Mary, Chap. 6, *Stat. of the Realm*, IV. 327.

[3] 32 Henry VIII., Chap. 16. *Ibid.*, III. 765. See also 21 Henry VIII., Chap. 16. *Ibid.*, 297.

the laws relating to strangers and aliens. These acts express the fear and jealousy of foreigners which seems to be innate in so many nations, and which in English history can be traced back to the time of Alfred the Great.[1]

Besides denization there were two other methods by which an outsider might enter the British family fold, *viz.*, naturalization and conquest. By the former a man was given the rights of a natural-born subject; by the latter his allegiance was changed and he was made a subject of England, but he was not necessarily given the full rights of one who was born in England itself. The privileges of naturalization might be conferred upon a person either by general act, applying to a class of people, or by special act, applying to particular individuals. The latter was the early method, while general laws were a later development.

It will be necessary to consider the English law of citizenship in detail, because some of these acts affected the colonies directly, while others, by making a man a citizen in England, affected his status in America. It is doubtful, however, if letters of denization gave any rights outside of England. We have already seen that the first break in the old feudal idea came in the time of Edward III., when children of English parents born out of the king's allegiance were given the rights of citizenship.[2] Primarily the law was intended for ambassadors' children, and would only touch the colonies in case such persons went thither. Another act of Edward III. provided that children born beyond the seas in the king's dominions could inherit in England.[3] This was an extension of English privileges, although by no means a departure from the principle of the ancient law, for place of birth was still the all-important factor.

Thus matters stood until the time of James I., when religious qualifications were demanded from all those that were naturalized. In the seventh year of James's reign it was declared that naturalization was merely a matter of grace and favor on the part of the monarch and should not be bestowed upon any except such as were of the established religion of the kingdom: "That no person or persons of what quality, condition, or place soever, being of the age of eighteen years or above, shall be naturalized . . . unless the same person or persons have received the sacrament of the Lord's Supper within a month next before any bill exhibited for that pur-

[1] In Alfred's time no alien merchant was allowed to reside in England upward of forty days except in fair-time. Cockburn, *Nationality*, 139.

[2] 25 Edward III., Statute I. *Stat. of the Realm*, I. 310.

[3] 40 Edward III., Chap. 10. *Ibid.*, I. 389.

pose ; and also shall take oath of supremacy and the oath of allegiance in the Parliament House before his or her bill is twice read." [1] The oath of allegiance and the sacraments here demanded acted as a restraint on the naturalization of conscientious Catholics and of all others having scruples in regard to Anglican forms. This restriction lasted many years. Charles II. passed a law naturalizing the children of those who had followed him into exile, and thus all English children born abroad during the years 1641–1660 were made English citizens.[2] Such an act, however, would affect the colonies only in case a person so naturalized went to America.

During the first years of his reign, William III. made but few changes in the law established by his predecessors,[3] but in 1700 an important act was passed, which provided that any natural-born subject could inherit even if his father, or mother, or any ancestor through whom he might claim was an alien.[4] This placed the children of aliens in the colonies on a par with those in England itself. Henceforth there was no distinction between a colonial and an Englishman in the matter of inheritance.

In the reign of Anne came still another advance in English liberality, for provision was then made for the naturalization of foreign Protestants.[5] This was the first general naturalization law, and it proved to be a long step forward. Conditions on the continent were such that many Germans were seeking new homes, and the seaports were crowded with refugees. At Frankfort they sought the aid of the English minister, who was instructed to tell the Palatines to get the consent of the Elector to their expatriation.[6] This is apparently the only occasion on which England has been particular to ask that those seeking homes within her borders should receive the consent of their rulers. However, England did not insist upon formal permission, and these people seem to have come without it. The Germans flocked to Great Britain during the spring of 1708 ; and Queen Anne, moved with pity at their sufferings, granted them a shilling a day and took steps to send them to the British colonies in America.[7] Some of them were naturalized

[1] *Ibid.*, IV. Pt. II. 1157.

[2] 29 Car. II., Chap. 6. *Ibid.*, V. 847.

[3] The only law passed in the first years of William's reign on naturalization was 9 Wm. III., Chap. 20, which naturalized the children of natural-born subjects that were born abroad between the years 1688 and 1698.

[4] *Stat. of the Realm*, VII. 590.

[5] *Ibid.*, IX. 63.

[6] Even in England it was necessary to get from the monarch permission to emigrate. Under Elizabeth the law was that no one could leave the kingdom without license under the great seal on pain of losing his personal property. Chalmer's *Political Annals*, 26.

[7] L. F. Bittinger, *The Germans in Colonial Times*, 59.

without fee and were given transportation to the colonies. They continued to come to England, and in October, 1709, there were some 15,000 of these poor and destitute foreigners encamped near London,[1] whose citizens became greatly interested in the strangers. The government was finally forced to take a hand in the matter, and as a result many of them were naturalized and sent to America.[2] Tools were furnished them together with free passage and promise of help during the first year. This promise was not kept, especially in the case of those who went to New York, and the result was severe suffering, which caused an immigration into Pennsylvania.[3]

According to the law passed in 1709, the naturalized had to take the oath of allegiance, and partake of the sacrament before witnesses, who signed a certificate to that effect. In addition, all the children of naturalized parents were to be considered natural-born subjects. When the Tories finally gained control of Parliament in 1712, they succeeded in having the law repealed, but the results were not overthrown, for the repeal was not intended to invalidate naturalizations already granted.[4]

The most important act affecting the colonies was passed in 1740, when English citizenship was established upon a broad basis. Colonial laws were overridden and in a measure superseded, since an alien colonist was permitted to obtain a status which would have equal value in every colony. The law provided that any person born out of the allegiance of the king of England who had resided in the colonies for seven years, and during that period had not been out of them at any one time for more than two months, could be naturalized by taking the oaths and subscribing to the declaration.[5] The act permitted Quakers to affirm and in administering oaths to Jews the words "upon the true faith of a Christian" were to be omitted. A fee of two shillings was collected for the entry of the names in a public record-book. Colonial naturalization certificates were to be recognized in the courts of Great Britain and Ireland, and colonial secretaries were ordered to send every year to England a list of the persons so naturalized. In this, as in previous laws, the sacraments had to be received in some Protestant or Reformed congregation within the kingdom of Great Britain or in the colonies three months before the oaths were taken. Limitations were placed upon office-holding in England, and no person under this act could

[1] *Ibid.*, 65.
[2] 7 Anne, Chap. 5. *Stat. of the Realm*, IX. 63.
[3] S. H. Cobb, *The Story of the Palatines*, 197–199.
[4] 10 Anne, Chap. 9. *Stat. of the Realm*, IX. 557.
[5] 13 Geo. II., Chap. 7. *Ibid.*, XVII. 370.

be admitted to the Privy Council or either house of Parliament, nor could such a one hold any office, civil or military, within the kingdom of Great Britain or Ireland. Otherwise, English rights and privileges were freely and fully given.

The lawmakers of the realm seem to have been in remarkably good humor, for in 1753 they went so far as to pass a law which permitted the naturalization of Jews that still held the Jewish faith, providing they had resided for seven years in America and would fulfil the requirements of the law just mentioned, with the exception of taking the Lord's Supper.[1] Parliament had evidently gone beyond what the country would support, however, for the act was repealed the following year on the ground that it disquieted the minds of many of His Majesty's subjects. Naturalization legislation continued to be enacted, and as late as 1773 it was provided that foreign Protestants who had served for two years in any of the royal American regiments could become naturalized under restrictions regarding office-holding in England.[2]

It was evident, however, that England had resolved to keep the matter of citizenship under her immediate control; for, in the same year, instructions were issued to all governors in America not to give their consent to any naturalization bill passed by the legislative bodies of the colonies under their charge.[3] The following year, 1774, an act was passed to prevent people from becoming naturalized merely for the sake of claiming the immunities of British subjects in foreign trade.[4]

We have now followed in some detail the development of the English law and have noted a steady progress. Starting with a distrust of outsiders, England advanced to the point where she was willing to take large numbers of foreigners into her body politic and give them almost equal rights with the most favored of her natural-born.[5] Although England broke with the old feudal principle by recognizing as citizens people born outside of her territory, she did not readily give up the idea of inalienable allegiance so far as her own subjects were concerned, and consequently held to that principle until the last part of the nineteenth century. The seventeenth century brought with it religious qualifications, which were enforced until the middle of the eighteenth century. The earlier laws had in mind chiefly matters of inheritance, but the last two cen-

[1] 26 Geo. II., Chap. 26. *Ibid.*, XXI. 97.
[2] The same restrictions as in the act of 1740.
[3] *New York Colonial Documents*, VIII. 402, 564.
[4] 14 George III., Chap. 84. *Statutes at Large*, XXX. 554.
[5] The privileges withheld were the holding of offices in England.

turies introduced sweeping naturalization acts, marking a liberality and broad-mindedness for which England has received too little credit.

Turning to a comparison of colonial with English conditions, we see that there was at no time throughout the English colonies that great distrust of foreigners which was to be found in England. Although it must be said that New England and especially Massachusetts Bay turned a cold shoulder to new-comers, and received with but few exceptions only those that strengthened the narrow theocratic state, on the whole strangers were welcomed; for the greatest need of America was men to develop the resources of the country.[1] While Europe was overcrowded, the colonies offered land in abundance, which could be had for almost nothing. America gave men an opportunity to build homes and fortunes free from the political, religious, and economic tyranny of the Old World. Proprietors of new colonies were anxious to obtain settlers and made inducements to new-comers. William Penn made special trips to the continent for the purpose of enlisting colonists and, not satisfied with that, he issued printed circulars, which set forth the glories of the land beyond the seas and the fortunes that awaited the immigrant.[2] One would almost think that he was reading a modern advertisement, and the whole movement closely resembles that of the nineteenth century when the northwestern states held out inducements to the Swedes and Norwegians. The seventeenth century drew its immigrants from England, Ireland, and Scotland, while most of the foreigners that came here were French Protestants. The eighteenth century marked a great change in colonization, for modern methods were brought into use, and the movement became more general.

The foreign immigrants went chiefly to the central and southern colonies, this being especially true of the Germans and the Scotch-Irish. New England, on the other hand, kept strict watch over all immigrants and favored the Independents. Consequently that part of the country remained more purely English than any other. The immigrants found their way to the frontiers, where they cleared the land and formed a bulwark against the Indians. New York and Virginia seemed, with that definite object in mind, to push the strangers to the west.

[1] Pennsylvania took a different view in 1729, when the government, frightened by the influx of foreigners, laid a tax on all new-comers, but this was repealed shortly. E. E. Proper, *Colonial Immigration Laws*, 50.

[2] George I. himself sent a special agent to the Mennonites of the Palatinate to suggest settlement in Pennsylvania. *Pa. Mag. of Hist.*, II. 126.

Turning to the attitude of individual colonies, we find Massachusetts upholding, as we should expect, the notion of a close corporation, membership in which was given with great care. Outsiders desiring admission had to seek the permission of the authorities. In 1662, by a resolve of the general court, a few French Protestants were permitted to enter the colony,[1] but it was not until 1700 that a general immigration law was put in force. Every ship coming into the ports of Massachusetts had to furnish to the authorities a list of the passengers, and this was followed a few years later by an act which forbade the importation of poor, infirm, or vicious people. The French Protestants that went there behaved themselves so well that in 1739 an act of naturalization was passed in their favor.[2] The spirit of exclusiveness, however, was by no means overthrown, for we find an English traveler writing as late as 1760 that few people of foreign birth were to be found dwelling in Massachusetts.[3] Connecticut was in the habit of demanding an oath of all strangers who came to dwell within her territory. New York had little or no immigration until the coming of the Germans. In fact, Governor Dongan called attention to the small number of immigrants who entered the province after its capture from the Dutch.[4] When immigration did come, it spread into the Mohawk valley and from there into Pennsylvania. Most of the southern colonies offered grants of land to attract settlers, and the possession of land gave not only material wealth, but also social rank and, generally, political privileges. Acts were passed to secure and guarantee these land-titles, and in some cases taxes were exempted.[5] South Carolina went so far as to prohibit the collection of money for all debts that had been contracted before the person came to the colony. This made the territory a refuge for those who had suffered under the severe English laws and was naturally much disliked by the creditor class.

Side by side with the material inducements held out to the newcomers should be placed the development of colonial laws by which the foreigner was made a full member of the body politic. The colonies employed the same methods of naturalization that England used. Letters of denization were issued by the governors; then there were special acts of the legislature relating to particular persons; and finally there were general naturalization laws. Colonial

[1] Chalmers, *Political Annals*, I. 315.

[2] Proper, *Colonial Immigration Laws*. See under "Immigration Laws of New England."

[3] *Ibid.*, 30.

[4] *Ibid.*, 39.

[5] *Ibid.*, Chap. I.

legislation, however, was much more limited than that of England, for no colony could give any rights outside of its own borders. Chalmers says that the naturalization acts gave many valuable rights, such as the privilege to acquire lands and to vote at elections, but that they were not intended to give the new-comers the right to act as factors and merchants or to own vessels, for that would be contrary to the navigation laws.[1] Aliens pleading colonial acts of naturalization as a protection for their trading had their vessels seized and condemned by the courts of admiralty, whose decisions were sustained on appeal to the king in council. Chalmers complained that several governors, who were of royal appointment, had given letters of denization, under which aliens had traded contrary to the navigation acts.[2] On this account William ordered that no more letters of denization be granted,[3] but as a matter of fact they do not seem to have been used in the colonies to any extent. The limited character of colonial naturalization is shown in repeated decisions. For example, Chief-Justice North ruled that a Virginian naturalization had merely local effect and did not confer the privileges of citizenship in any other colony.[4] The solicitor-general in 1718 held that a New Jersey act merely gave the rights of a natural-born subject in that province alone, and consequently there would be no harm in approving it.[5]

In studying colonial laws we are met at the outset with the lack of collections that are in any sense complete. New York and Pennsylvania deserve great credit for their collections, which have been most carefully prepared under the direction of the state. Massachusetts and Virginia also have collections that furnish one all that is needed. As an illustration of the difficulty arising from the lack of material, we may notice that while Chalmers maintains that Maryland was the colony to pass the first naturalization act, in 1666,[6] the Maryland laws are not accessible to enable us to determine the exact fact. It is also said that many people of alien races went thither and became citizens under this and subsequent acts.

The first naturalization law of South Carolina was passed in 1696, and whatever rights were previously given to foreigners must have been given by special acts or by letters of denization of which

[1] Chalmers, *Political Annals*, Book I., 316.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*, 321.
[5] Chalmers, *Colonial Opinions*, 133. See also foot-note.
[6] Chalmers, *Political Annals*, Book I., 315.

we have no record. The preamble of the act recited that the newcomers had greatly enriched the province by their "industry, diligence and trade."[1] Consequently it was enacted that "all aliens, male and female, of what nation soever, which now are inhabitants of South Carolina, their wives and children, shall have, use and enjoy all the rights, privileges, powers and immunities whatsoever, which any person born of English parents within this Province may, can, might, could or of a right ought to have, use and enjoy; and they shall be henceforth adjudged, reputed and taken to be in every condition . . . as free . . . as if they had been and were born of English parents within this Province." It made valid all bargains and sales that had been made previous to the act, and also provided that any person to obtain the benefits here established must petition within three months. No one was to have the benefits of the law unless he should take an oath of allegiance to King William.

The above legislation was limited to the aliens already in the province, and hence provided no general and lasting method for naturalization. Other foreigners equally worthy came to South Carolina in the next few years, and consequently further legislation was necessary. In 1704 another law was passed providing that "all aliens which shall hereafter come into this part of the Province, their wives and children, shall have, use and enjoy all rights, privileges . . . as if they had been born of English parents within the Province."[2] An oath of allegiance to Queen Anne was demanded and, in addition, one against popery. No alien naturalized by this act could be elected a member of the general assembly, but he could vote, providing he was of age and had the necessary property qualifications.

No more laws upon this subject were passed by South Carolina, and until after the Revolution all foreigners were naturalized under the act of 1704. In 1712 the assembly reënacted certain English laws, and among them the one of William III. providing that a natural-born subject might inherit estates even though his father or mother or the person he inherited from was an alien.[3] This merely strengthened the rights of the natural-born, but did not change naturalization. Its main interest lies in the fact that the assembly was in the habit of accepting English laws bodily.[4]

[1] Thomas Cooper, *Statutes at Large of S. C.*, II. 131.

[2] *Ibid.*, 251.

[3] *Ibid.*, 401.

[4] North Carolina and Georgia have no good collections of laws, and hence I have found it impossible to trace the history of naturalization in those colonies.

Virginia does not seem to have been bothered with an influx of foreigners during the first half-century of her life. The first legislation touching aliens is the law of 1657, which placed all aliens in the same status as Irish servants that came to the colonies without indentures, and made them serve from six to eight years.[1] Evidently, Virginia was not anxious for the presence of strangers at that time, but by 1671 the desires of the people had changed, for we have an act whose preamble recites the advantage of inviting other people to reside in the province. Any stranger desiring to make his home in Virginia might, after a petition to the general assembly and the taking of certain oaths of allegiance and supremacy, have an act passed that would give him all the privileges of a natural-born subject, but it was definitely stated that the benefits of the act were limited to the province. The speaker of the assembly was to receive eight hundred pounds of tobacco as a fee, while the clerk was to have four hundred.[2] A number of persons took advantage of these provisions, and during the next ten years a large number of private acts, naturalizing anywhere from one to ten persons, were passed.[3] In 1680 the assembly enacted that the governor could by a public document given under the great seal declare any alien or foreigner who was at that time living in the colony, or who should come thither in after years, naturalized on his taking the oath of allegiance. The governor was allowed a fee of forty shillings and the clerk twenty. One of the clauses provided that nothing in the law should give privileges contrary to the laws of England, evidently having in mind the navigation acts.[4] The governor continued to be the dispenser of privileges to aliens down to the Revolution.

Attention has already been called to the eagerness with which Penn sought on the continent new settlers for his province, and we are therefore prepared to find that he was liberal in the matter of naturalization. The colony was hardly established before an act was brought forward. On December 7, 1682, provision was made that all foreigners residing in the province could have all the rights of freemen by taking the oath of allegiance to the king, and one to William Penn as proprietor. The oaths were to be taken in the county courts, and a certificate under the seal of the governor was to be given, for which a fee of twenty shillings might be charged.

[1] Hening, *Statutes of Virginia*, I. 471. The exact meaning of the law is hard to determine and there is need of authoritative commentary.

[2] *Ibid.*, II. 289.

[3] *Ibid.*, 302, 308, 339.

[4] *Ibid.*, 464.

The law was intended primarily for the three lower counties on the Delaware, where there were many foreigners.[1] The assembly declared this a part of the fundamental law in March, 1683, but the declaratory act was repealed in 1693.[2] However, the naturalization law itself seems to have endured until 1700, when it was repealed.[3] Another law was passed the same year, which enabled the governor in a public instrument given under the great seal to declare "any alien, aliens, or foreigners being already settled or inhabiting within this government, or shall hereafter come to settle, plant or reside therein, having first given his or their solemn engagement or declaration to be true and faithful to the King as sovereign, and to the proprietor and governor of this province . . . to be to all intents and purposes fully and completely naturalized." The fees provided were small, and the declaration was made that no privileges were given which were forbidden by the law of England. In addition, it was declared that all Swedes, Dutch, and other foreigners that were settled in the province or territories before the issuance of letters patent should be considered fully and completely naturalized.[4] The law was repealed in England in 1705 in accordance with a report of the attorney-general, who held that the proprietor had no right to declare the Dutch and Swedes naturalized.[5] Until 1742 Pennsylvania naturalized by private act,[6] often grouping a large number of foreigners into one bill, but in that year a law was made which merely copied that of George II., which, as we have seen, provided a general method of naturalization for all the colonies.[7] Even after this date, however, the province continued to naturalize by private act,[8] and thereby frequently gave full rights to people that had resided in the colony a shorter time than the term provided in the English act.

A few words are sufficient to show what was done in the other colonies south of New York. We have already noticed the statement that Maryland had the honor of passing the first naturalization act in 1666, but whether it was a general or special law it is impossible to say. Indications would point to the latter, for we find an act of 1704 which said that the fees for naturalization acts and other

[1] *Charter to William Penn and Laws of the Province of Pennsylvania, 1682–1700* (Harrisburg, 1879), 105.

[2] *Ibid.*, 154.

[3] *Ibid.*, 106.

[4] *Statutes at Large of Pennsylvania*, II. 29–31.

[5] *Ibid.*, 492.

[6] *Ibid.*, 297; III. 424; IV. 57–58, 147, 219, 283, 327.

[7] *Ibid.*, 391.

[8] *Ibid.*, VI. 270, 399; VII. 47.

private laws should be determined by the assembly which passed the bill.[1] Delaware, of course, was covered by the laws of Pennsylvania, and we have seen that the law of 1700 had particular reference to the foreigners of that district. In New Jersey, the lords proprietors in their Concessions and Agreements provided that the assembly should have power "by act to give all strangers, as to them shall seem meet, a naturalization, and all such freedoms and privileges within the said Province as to his Majesty's subjects do of right belong."[2] No doubt the assembly made use of the privilege thus given, but the laws are not at hand to demonstrate the fact.

The colonial politics of New York furnish the student much of interest, for the colony, like the state, had strong political factions. The legislation of the colony has in consequence much significance, and this is especially true of the laws of naturalization. In 1683 an act was passed providing that any foreigner professing Christianity could be naturalized upon taking an oath of allegiance. To obtain this privilege one had to be actually living in the province at that time, and the act was not to be construed to set at liberty any bondman or slave.[3] All foreigners that came to the colony after this act might become naturalized by an act of the assembly. The religious qualifications were strictly enforced and Catholics were put under the ban. This is well shown in a letter of Governor Fletcher written in 1696, in which he says that he has found two French Roman Catholics in the last company of immigrants and has returned them for fear they would correspond with their friends in Canada.[4] The letter also shows that there was considerable immigration into Pennsylvania to avoid the burdens imposed by the defense of the frontier. This is only one of many indications that there was a good deal of intercolonial immigration. The next important piece of legislation came in 1715, when it was enacted "That all persons of foreign birth, now deceased, inhabiting and being within this colony at any time before the first day of November, One thousand Six hundred and Eighty-three, and being seized of Lands, Tenements or heriditaments shall forever hereafter be deemed, taken and Esteemed to have been naturalized, and entitled to all the Rights, Privileges and advantages of any of the natural born Subjects of the Colony."[5] The preamble of the act stated that previous governors had given letters of denization, on the strength of which many

[1] Thomas Herty, *Digest of the Laws of Maryland*, 377.
[2] A. Leaming and J. Spicer, *Grants, Concessions, and Constitutions of New Jersey*, 17.
[3] *Colonial Laws of New York*, I. 123.
[4] *Colonial Documents of New York*, IV. 159.
[5] *Colonial Laws of New York*, I. 858.

foreigners had purchased property. The question of inheritance had then arisen, and this law was for the purpose of confirming all titles. The naturalization of the dead is most curious, and New York alone can claim such legislation. Provision was also made that any living persons who had not taken advantage of the previous act might be naturalized by taking the oath of supremacy and subscribing the test and repeating the oath of abjuration, providing they took the step within the next nine months. The law of 1715 was passed only after a long strife between the governor and the assembly over the matter of salary. Governor Hunter wrote the board of trade that the assembly had postponed all business for an act of general naturalization, which was very popular in the colony. He finally agreed to the bill with the understanding that the assembly should settle a fixed income upon the governor.[1] Attorney-General Northey gave a long opinion on the law when it came before him, holding that the law of 1683 was sufficient for all purposes. "It seems," he said, "not reasonable to naturalize in the lump all Foreign protestants within that Colony, for that in naturalizations the particular circumstances of the persons naturalized should be considered."[2] The law seems to have stood despite the opinion of the attorney-general.

The general method of naturalization in New York was, however, by special act, and from this time until the Revolution hardly a year passed that a number of people were not made citizens. By 1730 the foreign Protestants had again risen in numbers, and a general law was passed to naturalize all such as had resided in the province one year. They were to take the oaths appointed by law, subscribe to the test and declaration, and take and repeat the abjuration oath in the presence of the governor and council of the province. Upon the payment of a fee of five shillings to the secretary, a certificate of naturalization was to be given.[3]

No general naturalization laws were enacted in New England. When rights were given to foreigners, they were provided for by special acts. Mention has already been made of the exclusiveness of that section. As a consequence of this spirit, little or nothing in the way of naturalization was attempted.

A summary of colonial legislation shows that the same methods were employed in America as in England: letters of denization were issued; general laws and private acts were passed. But the rights conferred by the colonies were much more limited than those

[1] *Colonial Documents of New York*, V. 403, 416.
[2] *Ibid.*, 497.
[3] *Acts and Resolves of the Province of New York*, II. 586.

given by the mother-country. In America the laws were limited to the province in which they were passed, and gave no rights beyond its limits. Some English laws, such as the navigation acts, acted as restraints on naturalization. The use of the private act for naturalization was very common, especially in Pennsylvania and New York. General laws were in force in South Carolina, Virginia, and Pennsylvania. The law of Pennsylvania was repealed by the queen, and hence its extensive use of the private act. In the last colonies mentioned the executive officers were generally given the power to naturalize foreigners on their taking the necessary oaths and paying the necessary fees. The political rights conferred by these laws varied in different colonies, according as the laws for voting differed. By permitting aliens to obtain land the naturalization acts generally gave each man the power to get the necessary voting qualifications. However, we noted that in South Carolina, although an alien might vote if he had the required amount of land, yet he could not hold office. The greatest benefit given by naturalization legislation was the right to purchase and hold land, which might be transmitted to one's children. The possession of land meant the means of becoming socially important, for rank in a new country depends largely upon such possessions. Not only that, but land in the early days furnished almost the only means of gaining wealth. Although an alien might be under certain political disabilities, even after naturalization, he had the satisfaction of knowing that he was laying the foundation of power which he could pass on to his children, who might freely obtain the rights denied him.

The colonial naturalization laws must, therefore, be considered of great significance. They encouraged the industrious alien to come to America, and his coming meant the rapid development of the country. Without complaint he faced the savages of the frontier, cut the forests, cleared the land, and stood as the advance-guard of our civilization. For that work he is deserving of much credit, and it was only fair that the provinces should make this industrious person an integral part of their people.

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